



Fax

To:

Board of Patent Appeals
and Interferences
Case 2009-1853

Alexandria, VA
22313-1450

From: Dr. Mitchell Swartz
Weston, MA 02493

**RESPONSE UNDER 37
CFR 1.116**

**EXPEDITED
PROCEDURE**

Fax:

FAX 571 273 0052

Date:

October 7, 2011

Phone:

Pages: 15

(including this page)

Re:

REPLY BRIEF
**Case Number Redacted
by Examiner Palabrica**
09/750, 480 12/28/00

CC:

Relevant to
No. 12/589,258
Thank you.

Includes Notice of Misprision of Felony and Obstruction of Justice Prior to Filing

THE INFORMATION TRANSMITTED IN THIS ELECTRONIC COMMUNICATION IS INTENDED ONLY FOR THE PERSON OR ENTITY TO WHOM IT IS ADDRESSED AND MAY CONTAIN CONFIDENTIAL AND/OR PRIVILEGED MATERIAL. ANY REVIEW, RETRANSMISSION, DISSEMINATION OR OTHER USE OF OR TAKING OF ANY ACTION IN RELIANCE UPON, THIS INFORMATION BY PERSONS OR ENTITIES OTHER THAN THE INTENDED RECIPIENT IS PROHIBITED. IF YOU RECEIVED THIS INFORMATION IN ERROR, PLEASE CONTACT THE SENDER AND PROPERLY DISPOSE OF THIS INFORMATION.

**RESPONSE UNDER 37 CFR 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3641**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**IN RE THE APPLICATION OF:
PAPER:**

Inventor : Mitchell R. Swartz
Serial no. 09/750,480
Filed: 12/28/00
For: METHOD AND APPARATUS
TO MONITOR LOADING
USING VIBRATION

This is a continuation of Serial no. 07/371,937
Filed: 06/27/89

Group Art Unit: 3641
Examiner: R. Palabrica

October 7, 2011

Commissioner for Patents
Alexandria, VA 22313-1450

**PETITION to the COMMISSIONER
Pursuant to 37 CFR 1.181**

1. This petition is made pursuant to 37 C.F.R. 1.181 to the Commissioner of Patents and is made to invoke his supervisory authority to correct a wrongful situation involving the appearance of significant impropriety in a "DECISION ON PETITION" [Exhibit "A" attached, hereinafter "Decision"] mailed December 6, 2010.

2. Pursuant to 37 C.F.R. 1.181, there is no fee. This Petition is reasonable based upon the reasons stated below and the facts as discussed in the Declaration supporting this Petition.

3. In the discussion below, reference is made to the Declaration of Dr. Mitchell Swartz (hereinafter called the "Swartz Declaration") dated October 6, 2011. In the discussion below, additional reference is made to the previous ignored Declarations of Dr. Mitchell Swartz in the above-entitled application, including those dated September 8, 2006, October 18, 2004, October 19, 2004, and January 28, 2004.

Gravamen

4. The pro se Petitioner received a "Decision" mailed October 19, 2010, signed by Mr. Carl Friedman, which was at variance with the facts. A Petition was submitted to correct the matter which has the appearance of impropriety. In response, the Petitioner received the present "Decision" mailed 12/06/2010, signed by Mr. Anthony Knight, which also is at variance with the facts, and covers up previous false statements. Supporting indelibly the case discussed in detail below, reference is made to Exhibit "B" which are the postal cards demonstrating valid and timely receipt of Petitioner's communications.

5. Despite Evidence to the contrary, Mr. Knight and others in the USPTO have made false statements to influence an upcoming Decision of the Board of Patent Appeals and are thus very timely relevant. These false statements have been made on federal documents, were sent across state lines, and coverup egregious systematic misconduct at the USPTO, made under color of law, made to discriminate against Petitioner, and made after Petitioner's checks were cashed.

6. The behavior of Mr. Knight who attempts to cover this up under color of law using disingenuity on federal documents is especially egregious. Attention of the Court, Congress, and the Board are directed to Exhibits "C" and "D" which demonstrate that the Examiner and USPTO have been disingenuous against the Petitioner (then Applicant and Appellant) despite that the Petitioner sent the Examiner Declarations citing portions of, and the existence of, said Exhibits. Attention of the Court, Congress, and Board is directed to the previous ignored Declarations of Dr. Mitchell Swartz in the above-entitled application, including those dated September 8, 2006, October 18, 2004, October 19, 2004, and January 28, 2004. Regarding the appearance of impropriety by some in the USPTO, attention of the Court, Congress, and Board is also directed to the previous Petitions to the Commissioner in the above-entitled application, including those dated September 8, 2006, April 5, 2005, October 18, 2004, October 19, 2004, and January 28, 2004, and October 29, 2010.

Background: TIME TABLE

06/27/1989 The original specification and claims filed; '937
09/10/1998 Order of the Board of Patent Appeal for Examiner to Consider
Declarations and other Matters
01/18/2001 Filing of Pet. Cert. to the US Supreme Court (00-1191) and Motion to
Reconsider (no response by the USPTO; in the words of the clerk at
POTUS this is the first time ever):
12/28/2000 Filing of Continuation '480
01/14/2004 First Final of '480
05/09/2004 Notice of Appeal (paid by checks, fully cashed)
07/02/2004 Appeal Brief for '480
10/19/2004 Notice of Board of Patent Appeal of False Statements by Dr. Palabrica
01/11/2005 *nunc pro tunc* "(new) Final" fabricated by Dr. Palabrica to remove case
from Board of Patent Appeal (obstruction of justice to prevent action
by Board of Patent Appeal)
04/05/2005 Petition for Removal of Dr. Palabrica and Correction of Abuse and False
Statements
04/06/2005 Filing of Continuation '677
10/20/2009 Filing of Continuation '258 because of abuse by Dr. Palabrica in '677 -
"taken" by Dr. Palabrica
10/19/2010 Previous "Decision" with false statements to 04/05/2005 Petition for
Removal of Dr. Palabrica from future applications (now relevant to
Board of Patent Appeals) -
0/19/2010 present "Decision" with false statements signed by Mr. Knight

UNDISPUTED FACT: There Was NO Abandonment

7. During the pendency of case '480, a Notice was also sent to the Board of Patent Appeal concerning false statements by Dr. Palabrica. To prevent action by the Board of Patent Appeal, Dr. Palabrica fabricated a *nunc pro tunc* "(new) Final", and withdrew the case from the Board of Patent Appeal. The date referred to above was the SECOND FINAL action by Dr. Palabrica made to obstruct justice and discriminate against Petitioner (now and then Appellant) while the Appeal was going on, and after the checks had been cashed.

Said second final Office action was January 11, 2005. This new SECOND FINAL led to a Petition for Recusal and Investigation of Dr. Palabrica and a Filing of Continuation, ie. '677. [underlined and bold for emphasis]

These two (2) actions were necessary because of the never-ending harassment, disingenuous statements, and obstruction of justice by Dr. Palabrica. As the Swartz Declaration stated,

"I sent the Petition because of abuse against me by the Examiner, Dr. Palabrica. I included detailed, substantive reasons supported by Evidence and Declarations. It has all been ignored."
[bold and underlined for emphasis]

8. To reiterate, Petitioner's [then Applicant's] Communications with the Office included contacting the Board of Patent Appeal (describing the abuse by the Examiner to further establish a salient record), and Petition to the Commissioner, and under the timely filed Continuation of the above-entitled patent application ('677). This is hardly abandonment to anyone with common sense.

9. The Continuation was received on time (Exhibit "B"). The date stamp of the USPTO confirms this as does the filing date. The original Petition was received on time (Exhibit "B"). The date stamp of the USPTO confirms this as does the filing date.

As the Swartz Declaration states,

"I received a "DECISION ON PETITION" [Exhibit "A" attached, hereinafter "Decision"] mailed December 6, 2010. The Decision does not even relate to what was in the Petition. The Decision ignored the arguments and the Declaration supporting the Petition."

"Instead of responding at all, the Decision has fabricated a false impression that the above-entitled invention was abandoned based upon nothing more than false statements by Mr. Knight."

"Patent application '480 was not abandoned as Mr. Knight disingenously states and implies. I sent a Petition because of abuse against me by the Examiner, Dr. Palabrica. I included detailed, substantive reasons supported by Evidence and Declarations. It has all been ignored. In part, the Examiner has ignored submitted Evidence rebutting him, and in its place he has substituted false and evasive statements. I also notified the Board of Patent Appeals. With the appearance of impropriety, Dr. Ricardo Palabrica, to prevent action by the Board of Patent Appeal, fabricated a new, second, Final while the Appeal was going on, and after the checks had been cashed."

UNDISPUTED FACT: The Law Confirms the Applicant

UNDISPUTED FACT: The *pro se* Applicant satisfied §1.135

10. The *pro se* Applicant satisfied several conditions of § 1.135 so there was absolutely NO Abandonment for failure to reply within time period.

First, the applicant of the above-entitled patent application did reply within the time period provided under § 1.134 and § 1.136.

11. Second, the *pro se* Applicant included a complete and proper reply AND a Petition to the Commission.

12. Third, the *pro se* Applicant made a bona fide attempt to advance the application to final action.

UNDISPUTED FACT: The *pro se* Applicant satisfied §1.113

13. Fourth, the *pro se* Applicant satisfied § 1.113 because he filed appeal and made Petition to the Director "in the case of objections or requirements not involved in the rejection of any claim (1.181)."

UNDISPUTED FACT: The *pro se* Applicant satisfied MPEP 714.13(11)

14. Fifth, the *pro se* Applicant satisfied MPEP 714.13(11) which states

"Failure to properly reply under 37 CFR 1.113 to the final rejection results in abandonment. A reply under 37 CFR 1.113 is limited to:

- (A) an amendment complying with 37 CFR 1.116;**
- (B) a Notice of Appeal (and appeal fee)"**

15. Said filing of said Continuation application under 37 CFR 1.53(b) was made on time.

The application was never abandoned.

There was never a failure to timely file a reply. [underlined and bold for emphasis]

UNDISPUTED FACT: There A Continuation Filed and Ignored

16. The Decision states,

The petition decision mailed October 19, 2010, noted that applicant had failed to timely respond to the final Office action mailed January 11, 2005. Petitioner points out that a "response" was filed in the form of continuation '677 on April 6, 2005. A review of Office records shows that continuation application No. 11/099,677 was filed April 6, 2005 (a continuation of that application was filed as application No. 12/589,258 on October 20, 2009)."

This is absolutely incorrect for several reasons.

First, the Petitioner points to a Petition that was sent to the USPTO.

Second, the date stamp of the USPTO confirms this Petition was received.

Third, this is especially relevant because said Petition discussed obstruction of justice and the appearance of impropriety by the some at the USPTO.

UNDISPUTED FACT: There Was A Petition Filed and Ignored

17. The Decision falsely states,

"This is a decision on the renewed petition under 37 CFR 1.181 filed November 1, 2010, to revive the above-identified application.

The petition is DENIED.'

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of January 11, 2005.

No reply was timely received in the above identified application and the application went abandoned on April 12, 2005. A Notice of Abandonment was mailed September 5, 2006."

18. Fourth, attention is directed to the fact that disputing the present flawed Decision, is the previous Decision. The difference heralds that the Petitioner's submissions have again been recently removed from the file folder. This is obvious because apparently it was there in 2010, when the Office also inadvertently revealed it had said, since-removed, Petition discussing obstruction of justice and the appearance of impropriety by the some at the USPTO. Note that said previous "Decision" referred to an April 8, 2005, which it stated,

"A petition under 37 CFR 1.1 81 was filed on April 8, 2005. This petition was denied by the Technology Center 3600 Director on May 10, 2005. This petition was the only response filed by applicant during the response time set in the final Office action."

[false statement by Mr. Friedman in the flawed "Decision" of 10/19/2010 since there was a Continuation filed, too]

It is apparent that in the present Decision, Mr. Knight has deliberately, falsely stated on federal document that the Applicant (then Appellant) had not responded with a Petition to the Commissioner, while claiming the case was "abandoned". In fact, the *pro se* litigant filed a Petition and a Continuation.

19. To coverup the submitted Petition, with the appearance of impropriety, Mr. Knight leads away from the Petition, and in the Decision disingenuously states,

"A petition under 37 CFR 1.181 was filed September 13, 2006. It was treated as a petition to withdraw the holding of abandonment and was dismissed in a decision mailed October 19, 2010. The instant renewed petition was filed November 1, 2010."

This is absolutely incorrect because the issue is the Petition filed in April 2005. Mr. Knight's misleading statement is designed to be misleading, and is at variance with the actual record.

20. As a result of the coverup by Mr. Knight, it is important to examine the original Petition which he is denying by fabricated falsehoods on federal documents sent through the US mail across state borders. The Petition was about an abuse by the Examiner and not about abandonment. The Petition made by the Applicant was about proven abuse by the Examiner, and there was strong support by Exhibits including un rebutted Declarations. The Petition to which the "Decision" responded (ignoring every issue therein and inventing a purported abandonment) requested the recusal of Dr. Palabrica for reasons supported by Evidence and Declarations, therein attached. The Petition stated at the end,

"WHEREFORE, with this Petition supported by Affidavit, the Applicant respectfully requests relief from the latest improper actions of the Examiner and his Supervisor. They have refused to respond to Applicant's arguments. They have refused to respond to Applicant's Declarants. They have clouded the record with two 'finals'. It is impossible for the Applicant to respond to two different Finals and a pattern which is not consistent with Office rules by the Examiner. Therefore, to clean the record and make it clear, Appellant is now forced to file a Continuation. The Appellant hereby requests that, first, the Office refund Appellant's costs for the wasted Appeal to the Board. This amount is \$20,000.00 Furthermore, the Appellant hereby requests that given Exhibit "G", that the Office and the Commissioner immediately act to move this action to different Group Art and to recuse the Examiner and his Supervisors hereinafter from all of Appellant's applications. Attention of the Court is directed to the fact that failure to connect this in the light of said Exhibit "G" would reasonably be interpreted as an admission by the Office that said policy denying rights to Applicant and denying energy and inventions to America as itemized in said Exhibit "G" not only continues, but continues with the willful and explicit approval of both the Commissioner and the Office. "

EVIDENCE OF FALSE STATEMENTS

21. The present Decision signed by Mr. Anthony Knight has the appearance of an impropriety.

22. The present Decision signed by Mr. Anthony Knight does not even relate to the submitted Petition. The flawed, disingenuous "Decision" does not discuss substantively the relevant arguments in the Petition and submitted Declarations which supported said Petition.

23. The present Decision ignored the Petition and the record, so it is impossible to tell how Mr. Anthony Knight weighed Petitioner's arguments. There is absolutely no way for the Petitioner to present Mr. Anthony Knight's reasons for rejection to the Board of Appeals or the federal court in the upcoming, apparently requisite Complaint. The Petitioner had a right to know the substantive, precise reason, and the scientific basis, and authority which allow Mr. Anthony Knight and Mr. Carl Friedman to dismiss substantive Arguments by the Petitioner without accurate citation, relevant analysis, or substantive coherent response.

24. The present Decision signed by Mr. Anthony Knight has false statements.

25. The present Decision signed by Mr. Anthony Knight containing false statements was sent through the US mail into the Commonwealth of Massachusetts.

26. The present Decision signed by Mr. Anthony Knight covers up false statements made in a Decision of October 19, 2010.

27. The present Decision signed by Mr. Anthony Knight creates a false impression that the above-entitled invention was abandoned based upon false and disingenuous statements in the flawed "Decision". Nothing it states could be further from the truth.

CONCLUSIONS

Count #1 False Statement on Federal Documents by Mr. Carl Friedman

Count #2 False Statement on Federal Documents by Mr. Anthony Knight

**Count #3 False Statement on Federal Documents by Mr. Anthony Knight
Sent thru US Mail across to the Commonwealth of Massachusetts**

Count #4 Misprision of Felony by Mr. Anthony Knight

**Count #5 Misprision of Felony by Mr. Anthony Knight's Supervisors
(names not known at this time).**

EVIDENCE OF COVERUP

28. The Decision falsely states on a federal document,

"As petitioner has failed, despite repeated attempts, to provide any persuasive arguments meriting withdrawal of the holding of abandonment, the petition must be denied.

The prior decision, which refused to withdraw the holding of abandonment, has been reconsidered, and is affirmed.

Telephone inquiries related to this decision should be directed to Carl Friedman at 571-272-6842. "

The previous Decision signed by Carl Friedman in the Decision of October 19, 2010 fabricated an abandonment where none ever existed. Said previous Decision is egregious and odious because it falsely claims Applicant did not reply when the date stamp of the Office heralds that Applicant did.

29. The designer of said present "Decision" signed by Mr. Anthony Knight contained malicious false statements, and was sent through the US mail into the Commonwealth of Massachusetts. There is therefore misprision of felony by Mr. Knight and possibly his/their supervisor(s). As the Swartz Declaration states,

"The second "Final" Office action made by Dr. Palabrica to coverup my Complaints against him was on January 11, 2005. As a result, I sent a Petition because of abuse against me. It included detailed, substantive Evidence and Declarations. The date stamp of the USPTO confirms this was received. It has all been ignored. As a result, I filed a valid Continuation. The date stamp of the USPTO confirms this as does the filing date of patent application '258."

30. The present Decision signed by Mr. Anthony Knight and the Decision of October 19, 2010 constitute two falsified documents tantamount to obstruction of justice against the Board of Patent Appeals, the federal court, and the Applicant.

31. Said Decisions are unfair, improper, with the appearance of impropriety.

32. Said Decisions have the appearance of impropriety because they involve the same conspiring individuals ruling on themselves, "rubber-stamping" false statements.

33. Said present Decision and said previous Decision [hereinafter "Decisions"] discriminate against the Applicant by fabricating and making up an "abandonment" which was never there.

34. The present Decision signed by Mr. Anthony Knight containing false statements, sent through the US mail into the Commonwealth of Massachusetts, was designed to obstruct justice.

35. The present Decision signed by Mr. Anthony Knight containing false statements, sent through the US mail into the Commonwealth of Massachusetts, was designed to continue discrimination.

36. Said Decisions have the appearance of impropriety because they are an obstruction of justice to avoid Internal Affairs inquiries at the USPTO from dealing with corrupt issues within the USPTO which have the appearance of impropriety.

CONCLUSIONS

Count #6 Perjury and/or False Statements on Federal Documents by Mr. Anthony Knight to Cover up Other False Statements

Count #7 Misprision of Felony by Mr. Anthony Knight

Count #8 Discrimination Under Color of Law by Mr. Anthony Knight

Count #9 False Statements on Federal Documents by Mr. Anthony Knight to Coverup Cashed Checks

Count #10 Conspiracy to Obstruct Justice by Mr. Carl Friedman and Mr. Anthony Knight Using False Statements on Federal Documents Sent thru US Mail across to the Commonwealth of Massachusetts

Count #11 Misprision of Felony by Mr. Anthony Knight's Supervisors (names not known at this time).

37. The Petitioner is interested in judicial economy. The present Petition is another honest attempt by the Petitioner for judicial economy by allowing for the Commissioner and the USPTO to correct this matter before filing state and federal civil law suits seeking damages of \$10,000 a day going back to the original filing of '937. The Office has shown (including by the present flawed "Decision" which fabricates an "abandonment" when there was none) systematic conspiratorial behavior to violate Appellant's civil rights. Specifically, this group now includes Carl Friedman, Ricardo Palabrica, David Bricci, Robert W Bahr, Janice A. Falcone, Sharon Gibson, Robert Oberleitner, Richard K. Seidel, Arthur Grimley, David Bricci, Charles Pearson, and Jon W. Dudas, all individually and as Officers.

38. The Petitioner is interested in judicial economy. In the previous "Decision", the record was distorted by Carl Friedman has the appearance of impropriety. It has occurred during an obstruction of justice -- and a request for relief. Furthermore, said obstruction of justice has egregiously occurred AFTER willful violations by the USPTO were sent (i.e. Notification) where said violations now may include state and federal offenses under color of law, using false statements and fraud, including but not limited to, Title 18 U.S.C. §1341, Mail Fraud, 18 U.S.C. §1001, Presenting a False Document to an Agent of the United States Government, 18 U.S.C. §1027 False statements and concealment of facts in relation to documents required by the Employee Retirement Income Security Act of 1974 and other possible offenses including civil and/or criminal RICO violations, 18 U.S.C. §§1961-68 (RICO Act), 18 U.S.C. §1001 (False Statements to Agents of the U.S. Government), 18 U.S.C. §1341 (Mail Fraud), and 18 U.S.C. §241 (Conspiracy Against Civil Rights), and the Espionage Act of 1917, 50 U.S.C. 32 (a).

39. The Petitioner is interested in judicial economy. In the present "Decision", the record has been distorted by Mr. Anthony Knight with the appearance of impropriety. It has occurred during the reporting of disingenuous statements by individuals in the USPTO and thereby comprises an obstruction of justice. Hence, the need for relief. Furthermore, said obstruction of justice has egregiously occurred AFTER willful violations by the USPTO were sent (i.e. Notification) multiple times and were received, and where said violations now may include state and federal offenses under color of law, using false statements and fraud, including but not limited to, Title 18 U.S.C. §1341, Mail Fraud, 18 U.S.C. §1001, Presenting a False Document to an Agent of the United States Government, 18 U.S.C. §1027 False statements and concealment of facts in relation to documents required by the Employee Retirement Income Security Act of 1974 and other possible offenses including civil and/or criminal RICO violations, 18 U.S.C. §§1961-68 (RICO Act), 18 U.S.C. §1001 (False Statements to Agents of the U.S. Government), 18 U.S.C. §1341 (Mail Fraud), and 18 U.S.C. §241 (Conspiracy Against Civil Rights), and the Espionage Act of 1917, 50 U.S.C. 32 (a).

40 The present flawed Decision is relevant to Board of Patent Appeals '258 because Dr. Palabrica "took" the Continuation '258 and purported that '480 was abandoned to the Board. Those false statements also have the appearance of impropriety.

41. NOTA BENE: This Petition does hereby serve in the Commonwealth of Massachusetts state and federal court (first circuit) that a final reasonable Notice was delivered requesting a substantive address of the Petitioned issues in the interest of judicial economy.

42. NOTA BENE: This Petition does hereby serve in the Commonwealth of Massachusetts state court that a final reasonable Notice has been again delivered requesting a substantive address of the Petitioned issues, including false statements on federal documents, sent through the US mail into the Commonwealth of Massachusetts, after filing fee and Appeal fee checks were cashed from a citizen of the Commonwealth of Massachusetts for a patent application and then Appeal (thereby also invoking USPTO violations of M.G.L.93A incurring triple damages and legal fees).

WHEREFORE, as the record and date stamps of the USPTO demonstrate there has never been any abandonment as the flawed "Decision" purports, and as the record and date stamps of the USPTO demonstrate there has also been an unaddressed Petition by the Petitioner [followed by documented further abuse of the Applicant (now Appellant)] heralding the appearance of impropriety in the Office] this Petition supported by Affidavit respectfully requests relief from the flawed "Decision", which is of immediate relevance to the Board of Patent Appeals.

Respectfully submitted,

Mitchell Swartz, ScD, MD

CERTIFICATE OF MAILING [37 CFR 1.8(a)]

October 7, 2011

To Whom it Does Concern:

I hereby certify that this correspondence will be deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to
The Commissioner for Patents
Alexandria, VA
22313-1450
on the date below. Thank you.

Sincerely,

October 7, 2011

M.Swartz Weston, MA 02493

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE THE APPLICATION OF:

PAPER:

Inventor : Mitchell R. Swartz

Serial no. 09/750, 480

Filed: 12/28/00

For: METHOD AND APPARATUS
TO MONITOR LOADING
USING VIBRATION

Group Art Unit: 3641

Examiner: R. Palabrica

October 7, 2011

DECLARATION OF DR. MITCHELL SWARTZ

I, Mitchell R. Swartz, declare that I am a citizen of the United States of America and the inventor of the invention described in the above-entitled application.

1. I have worked in the fields of nuclear physics, calorimetry, electrical engineering, and energy production and conversion for more than four decades, including experimental projects at the Massachusetts Institute of Technology and Massachusetts General Hospital

2. I received a "DECISION ON PETITION" [Exhibit "A" attached, hereinafter "Decision"] mailed December 6, 2010. The Decision does not even relate to what was in the Petition. The Decision ignored the arguments and the Declaration supporting the Petition.

3. Instead of responding at all, the Decision has fabricated a false impression that the above-entitled invention was abandoned based upon nothing more than false statements by Mr. Knight.

4. Patent application '480 was not abandoned as Mr. Knight disingenuously states and implies. I sent a Petition because of abuse against me by the Examiner, Dr. Palabrica. I included detailed, substantive reasons supported by Evidence and Declarations. It has all been ignored. In part, the Examiner has ignored submitted Evidence rebutting him, and in its place he has substituted false and evasive statements.

5. I also notified the Board of Patent Appeals. With the appearance of impropriety, Dr. Ricardo Palabrica, to prevent action by the Board of Patent Appeal, fabricated a new, second, Final while the Appeal was going on, and after the checks had been cashed.

6. The second "Final" Office action made by Dr. Palabrica to coverup my Complaints against him was on January 11, 2005. As a result, I sent a Petition because of abuse against me. It included detailed, substantive Evidence and Declarations. The date stamp of the USPTO confirms this was received. It has all been ignored. As a result, I filed a valid Continuation. The date stamp of the USPTO confirms this as does the filing date of patent application '258.

I declare that all statements herein of my own knowledge are true and that all statements made on information and belief are believed to be true.

Signature of Inventor:

October 7, 2011

Mitchell R. Swartz, ScD, MD
Weston, Mass



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
Oct 10-11

MAILED

DEC 06 2010

OFFICE OF PETITIONS

Mitchell R. Swartz, ScD, EE, MD
16 Pembroke Road
Weston MA 02493

In re Application of
Mitchell R. Swartz
Application No. 09/750,480
Filed: December 28, 2000
For: METHOD AND APPARATUS TO
MONITOR LOADING USING VIBRATION

ON PETITION

Exhibit "A"

This is a decision on the renewed petition under 37 CFR 1.181 filed November 1, 2010, to revive the above-identified application.

The petition is **DENIED**.¹

BACKGROUND

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of January 11, 2005. The reply to a final Office action must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2).

No reply was timely received in the above identified application and the application went abandoned on April 12, 2005. A Notice of Abandonment was mailed September 5, 2006.

A petition under 37 CFR 1.181 was filed September 13, 2006. It was treated as a petition to withdraw the holding of abandonment and was dismissed in a decision mailed October 19, 2010.

The instant renewed petition was filed November 1, 2010.

¹ This decision is a final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. See MPEP 1002.02.

2004
JUL 2 2004
MAIL ROOM
U.S. PATENT & TRADEMARK OFFICE

The date stamp of the Board Of Patent Appeals on this postcard will indicate receipt of:

- 1) Appellant's Appeal Brief (in triplicate),
- 2) containing a Certificate of Service on the last page,
- 3) Appellant's Appendix attached thereto,
- 4) Appellant's Certificate Of Mailing,
- 5) Check in the Amount of \$165.
- 6) Request for Investigation of Mr. Palapricha, and
- 7) This Self-addressed postcard for the date stamp of the Board Of Patent Appeals

Thank you, Dr. Mitchell Swartz

Mailed July 2, 2004

Serial no. 09/750, 480

Exhibit "B"

The date stamp of the Board Of Patent Appeals on this postcard will indicate receipt of:

- 1) Petition to Commissioner pursuant to 37 C.F.R. 1.181 for Referral to Inspector General
- 2) Declaration supporting Petition, and
- 3) This Self-addressed postcard for the date stamp of the Board Of Patent Appeals

Thank you, Dr. Mitchell Swartz

Serial no. 09/750, 480



The date stamp of the United States Patent Office on this postcard will indicate receipt of:

1. Petition to the Commissioner pursuant to 37 C.F.R. 1.181 with a Certificate Of Mailing,
2. and a Declaration Supporting Petition,
3. Exhibits "A"- "F" proving there was an Appeal
4. Exhibit "G" Proof of Offense Conspiracy to prevent issue of Applicant's patents
5. This self-addressed stamped postcard.

S.N. 09/ 750, 480 Filed: 12/28/00

Thank you.

April 5, 2005 Dr. Mitchell Swartz

